



March 2005

MMA GUIDE FOR STATE LEGISLATORS

The Medicare Modernization Act provides all Medicare beneficiaries the opportunity to obtain prescription drug coverage beginning in January 2006. During calendar year 2005, the MMA plans and infrastructure to support the benefit are being implemented. Later this year CMS will send you information for your constituents on the implementation of the Medicare drug benefit. This package contains a schedule for implementation and Checklist for State Legislators. Below are brief descriptions of MMA provisions that we believe will be of interest to you for your legislative deliberations and oversight. In general, state legislators should work closely with their state Medicaid agency and State Pharmaceutical Assistance Program. On the attached checklist, items in italics indicate where the legislature may need to revise state statutes or appropriations.

State Pharmacy Assistance Programs (SPAPs)

SPAPs are state sponsored programs that provide low income citizens increased access to prescription drugs by paying for prescription drugs or reducing drug costs. The states have two options under the new drug benefit for their Medicare members:

- States can supplement Medicare beneficiaries' drug coverage by providing their own state supplemental benefit program or purchasing additional benefits through private insurance plans; or
- States can provide premium assistance and/or "wrap-around" the benefit by contributing to cost sharing. The amounts paid by the SPAP count towards the beneficiary's true-out-of-pocket expenditures (TrOOP*).

Low-Income Subsidy (LIS)

States are required to take and process applications for the Low-Income Subsidy program, and to screen and offer enrollment into the Medicare Savings Programs (MSP) comprised of QMB only, SLMB only, and QI. The Social Security Administration (SSA) is required to determine eligibility for this subsidy. SSA will mail applications to potential eligible beneficiaries beginning in May. We strongly encourage states to use the SSA application and eligibility process. Beneficiaries who must apply for LIS are below 150 percent of the poverty level and with limited resources.

Full-Benefit Dual Eligible Beneficiaries**

Full-benefit dual eligible beneficiaries will be enrolled in the Medicare drug benefit January 1, 2006. Their last day of Medicaid drug coverage will be December 31, 2005. Full-benefit dual eligible beneficiaries will receive a letter from Medicare explaining the benefit and encouraging them to enroll in a Medicare drug plan. If they do not enroll, they will be auto-assigned to a plan and their coverage will begin on January 1, 2006.

CMS will facilitate the enrollment of other low-income beneficiaries who are not full-benefit dual eligible beneficiaries (MSP and SSI only) into a prescription drug plan. These beneficiaries will receive a letter notifying them they have until the end of the open enrollment period to select a plan. If the beneficiaries do not select a plan, they will be enrolled on a random basis in a plan effective June 1, 2006. These beneficiaries will be given a one-time chance to change plans after they have been enrolled in case they prefer a different plan.

Retiree Options

State retirement systems sponsoring retiree prescription drug coverage to Medicare eligible state government retirees, as well as spouses and dependents that are Medicare eligible, may achieve substantial savings as a result of the retiree subsidy available under the MMA. CMS estimates that participating plan sponsors will receive on average a subsidy of \$668 per retiree, which the state is statutorily permitted to utilize however it deems necessary.

In addition to the retiree drug subsidy, there are three additional options that state retirement systems may consider. They include:

- Setting up a supplemental plan and coordinating benefits with the coverage offered by Medicare prescription drug plans.
- Contracting with a Medicare prescription drug plan or Medicare Advantage prescription drug plan to subsidize more of their retirees' cost sharing and provide additional benefits.
- Direct contracting with Medicare to become a Medicare prescription drug plan.

State Contribution

MMA requires that states make monthly payments to the federal government starting in January 2006 to offset a portion of the costs associated with assumption of prescription drug costs by the Medicare program for full-benefit dual eligible beneficiaries.

State Insurance Laws and Regulation

MMA prohibits Medicare Supplement (Medigap) issuers from continuing to sell policies that contain prescription drug coverage to new enrollees after 1/1/06. Also, Medigap issuers must remove drug coverage from any Medigap policy held by an individual who enrolls in a Medicare prescription drug plan. The NAIC adopted the MMA-required changes to its Model Regulation. Unless a state is eligible for a grace period because it needs to enact legislation and does not have a regular legislative session scheduled at which it can make these changes, a State must have adopted the changes by one year after NAIC adoption (by no later than September 8, 2005).

State Health Insurance Assistance Programs (SHIP)

In each state there is a program specifically funded to help people with Medicare by providing free local health insurance counseling. If you know of a beneficiary or caregiver in need of health insurance counseling you can refer them to a SHIP for additional help. The program in your state may be known by a different name. To get more information and contact names and numbers please find them on www.medicare.gov under the helpful phone numbers and websites section.

**True Out of Pocket expenditures: Only those costs actually paid by the beneficiary and not reimbursed by a third-party (such as a supplemental insurance plan sponsored by a former employer) will count toward the limit that determines the start of the catastrophic coverage. Most third-party assistance, such as that from employers and unions, does not count toward the TrOOP limit. By law, assistance provided by family members and Medicare's new low-income cost sharing subsidy (which pays all but nominal co-pays in most cases) counts toward TrOOP. Also, help from state pharmaceutical assistance programs counts. Additionally, CMS determined that assistance from charities unaffiliated with employers or unions including patient assistance program will count toward TrOOP.*

***Full-Benefit Dual Eligible Beneficiaries: Beneficiaries who qualify for both Medicare and Medicaid.*

For further information please go to our state information website at

<http://www.cms.hhs.gov/medicarereform/pdbma/state.asp>.

Questions can also be sent to StateLegislators@cms.hhs.gov.

A CHECKLIST FOR STATE LEGISLATORS ON THE MEDICARE DRUG BENEFIT

STATE PHARMACY ASSISTANCE PROGRAMS (SPAPs)

- ☐ Does your state have a state pharmaceutical assistance program in operation? Was it established by law?
- ☐ Will the state pharmaceutical program be eliminated, scaled back, and/or will it wrap around Part D benefits?
- ☐ *Related to wrap around benefits, will the state SPAP help with cost sharing, coordinate with Medicare prescription drug plans, or provide supplemental benefits?*
- ☐ How will the SPAP assist enrollment of clients into the Part D benefit?
- ☐ Does your state intend for your SPAP to be a qualified SPAP or a non-qualified SPAP? The difference will affect the calculation of true out of pocket costs (TrOOP).
- ☐ *Do you need legislation for program changes? Is your state agency (Medicaid, eligibility, etc) working with SSA to provide access to the SSA application and eligibility process?*

LOW-INCOME SUBSIDY (LIS)

- ☐ Will your state be prepared to begin making eligibility determinations and processing LIS application by July 1, 2005? If yes, what are your plans and/or progress in meeting the deadline?
- ☐ Will your state use the SSA LIS application form? If no, has your state developed its own LIS application form? If yes, has your state coordinated with SSA?
- ☐ Does your state have a process to determine eligibility for the LIS for those who request a state determination?
- ☐ Has your state developed a process to screen and enroll for the MSP?
- ☐ Will you need systems changes for LIS determinations, data exchange, identification of deemed eligible individuals, phased-down contributions, etc.?
- ☐ Has your state developed and implemented their systems requirements?
- ☐ *Is there sufficient funding for the additional staff time needed to complete LIS determinations?*
- ☐ Does your state plan to provide outreach & education about the LIS?
- ☐ Does your state plan to provide outreach & education about the Part D plans beneficiaries can choose?
- ☐ *Do you need any state legislation to implement changes in the program?*
- ☐ Does your state have plans for your intake workers to receive formal training?

FULL-BENEFIT DUAL ELIGIBLE BENEFICIARIES

- ☐ *Do you need legislation to provide Medicaid coverage of drugs excluded from coverage under the Medicare prescription drug benefit for the dual population?*
- ☐ Does your state Medicaid agency plan to send notices to full-benefit dual eligible beneficiaries that will lose their Medicaid prescription coverage?
- ☐ Has your state Medicaid agency been able to identify its Medicaid enrollees that are full-benefit dual eligible beneficiaries?
- ☐ When will your state have the ability to report monthly data accurately to CMS on full-benefit dual eligible beneficiaries?
- ☐ Is your state Medicaid agency amending its Medical Assistance Plan to reflect the changes accordingly?
- ☐ Has your state considered the need to amend the state plan/waivers to remove the drugs covered under Part D?
- ☐ Will your state cover the “excluded” Part D drugs that are an option under Medicaid?
- ☐ Will your state do additional outreach to full-benefit dual eligible beneficiaries to help them select a Medicare prescription drug plan?

A CHECKLIST FOR STATE LEGISLATORS ON THE MEDICARE DRUG BENEFIT

RETIREE OPTIONS

- ☐ Is state drug coverage offered to Medicare-eligible active employees equivalent or better than Medicare prescription drug coverage?
- ☐ Is state drug coverage offered to Medicare-eligible retirees equivalent or better than Medicare prescription drug coverage?
- ☐ When will the state notify Medicare-eligible active employees and retirees whether their drug coverage is equivalent or better than Medicare prescription drug coverage?
- ☐ If the retiree coverage is equivalent or better, will the state apply for the retiree drug subsidy?
- ☐ *If your state qualifies for and receives the subsidy, which agency or entity will receive the subsidy and how will your state allocate incoming funds?*
- ☐ If the retiree coverage is not equivalent or better, will the state revise the coverage to supplement Medicare prescription drug coverage:
 - by offering a stand-alone supplemental plan?
 - by purchasing integrated supplemental coverage from a Medicare prescription drug plan?
 - by direct-contracting with Medicare to become a Medicare prescription drug plan?

STATE CONTRIBUTION

- ☐ *Have you discussed the state contribution payments with your Medicaid Agency? Have the contribution payments been budgeted for?*
- ☐ Has your state provided CMS with the data necessary to calculate the phase down state contribution baseline Medicaid Statistical Information System (MSIS) reporting for CY 2003?
- ☐ Is the state on track to provide the monthly dual eligible enrollment data needed to support the phase down enrollment counts?

GENERAL

State Insurance Laws and Regulations

- ☐ *Are changes needed to state insurance law or regulations allowing the operation high deductible plans with health savings accounts?*
- ☐ *Are changes needed to state insurance law or regulations regarding Medigap policies to bring them in conformity with MMA provisions?*

General Education and Awareness

- ☐ Do state agencies that interact with seniors and people with disabilities and their families have a plan for informing clients about the drug benefit?
- ☐ Are there any relationships and/or procedures that need to be in place between state agencies and prescriptions drug plans to handle problems, concerns or questions?



Centers for Medicare & Medicaid Services

Visit our website at <http://www.cms.hhs.gov/medicarereform/pdfma/state.asp>.

MMA Impact on States

Timeline affecting Low Income and Dual Eligible Populations

